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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,280	07/31/2000	Axel Schulte	40098	9762

7590 07/05/2002
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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 07/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/601,280

Applicant(s)

SCHULTE

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-9 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
2. The disclosure is objected to because of the following informalities: the lack of subheadings. Appropriate correction is required.

Drawings

3. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81. No new matter may be introduced in the required drawing.

Double Patenting

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Art Unit: 1771

5. Claims 4-9 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-6 of copending Application No. 09/601,279. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Objections

6. Claim 5 is objected to because of the following informalities: The phrase "an adhesive on acrylate base is provided" is grammatically awkward. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 1 recites the limitation "its nap side" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim. Claim 1 is also indefinite for the use of reference number 7 for both the anchoring means and the micro-adhesive closing. Claim 1 recites the limitation "their ends" in line 7 of the claim. There is insufficient antecedent basis for this limitation in the claim. Claims 2-9 are rejected for their dependency upon claim 1.

10. Claim 2 is indefinite for the use of the term "plate-like." The scope of said term is unclear.

Art Unit: 1771

11. Claim 3 recites the limitation "their tops" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

12. Claim 6 is indefinite because it is unclear what the difference between the claimed "felt" and "fleece" materials are. In the textile arts today, "felt" and "fleece" are often synonymous terms, which describe a needlepunched nonwoven material. Thus, claim 6 is indefinite, as well as claim 8 which employs the term "needle felt."

13. Claim 7 is indefinite because it is unclear what is meant by the phrases "loose breaker fabric" and "smooth stitches." The specification does not elaborate on these phrases. Additionally, the terms "loose" and "smooth" are relative terms. The terms "loose" and "smooth" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Claim 7 is not further examined on the merits due to its extreme indefiniteness.

14. Claim 8 is indefinite for the use of the phrase "non-woven textiles such as synthetic materials...." "Synthetic materials" is not a type of nonwoven fabric, but rather a type of material from which a nonwoven is made. Additionally, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Furthermore, it is unclear what the difference between a "needle felt" and "needle nap" nonwoven is.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 1-3 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 195 32 685 issued to Leopold in view of DE 196 46 318 issued to Hammer.

Applicant claims a carpet installation system comprising a carpet having a loopless backing and an underlay material having a hooked surface which engages said loopless backing. The loopless material is a felt, fleece, or needled nonwoven. The hooked surface is "a micro-adhesive closing" according to DE 196 46 318 (i.e., Hammer reference) (specification, page 2, lines 12-13). The hooks are mushroom or plate-like in shape and have concave depressions on the top of said hooks. The depressions may also have an acrylate-based adhesive therein. The hooked surface may be adhered to a floor substrate by way of adhesive.

Leopold discloses a floor covering comprised of two layers (abstract). The first layer comprises an upper layer of the face of the floor covering (1) and a lower layer of a felt (2) (abstract). The lower felt layer (2) connects with an underlayer (4) comprised of an "upwards pointing surface with properties which allow it to engage with the felt" (i.e., hooked material). The other side of the underlayer (4) may be glued to a floor substrate (5).

Thus, Leopold teaches the presently claimed invention with the exception of the claimed micro-adhesive closing with hooks having a concave depression. However, as noted above, said micro-adhesive closing is known in the art, as evidenced by the Hammer reference. Thus, it

Art Unit: 1771

would have been obvious to one skilled in the art to employ the Hammer hooked material for the hooked material of Leopold, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. One would be motivated to choose the Hammer hooked material for its inexpensiveness and its integration of said hooks with a carrier material. Therefore, claims 1-3 and 6-9 are rejected as being obvious over the cited prior art.

Allowable Subject Matter

17. Claims 4 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach hooked materials having an adhesive thereon for additional bonding to a looped or loopless material.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

19. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the

Art Unit: 1771

organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA
PRIMARY EXAMINER

cj
July 1, 2002